HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 4973 of 2001 (M/S)

Bhagat Singh

Vs.

Addl. Commissioner & others

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 06.12.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4973 of 2001 (MS)

(Old No. 17410 of 1991)

Bhagat Singh ..... Petitioner

Versus

Addl. Commissioner & others ..... Respondents

Dated: December 6, 2004

Sri Dharm Veer, Sr. Advocate for the petitioner
Standing counsel for the respondents.

Hon. Rajesh Tandon,J.

Heard the learned counsel for the parties.

By the present writ petition the petitioners has prayed for a writ of certiorari quashing the order dated 27.9.1990 as well as order dated 28.6.1989.

Briefly stated a notice under section 10(2) of U.P. Imposition of Ceiling on Land Holding Act 1960, was issued to the petitioner declaring 47 Bigha 11 Biswa land as surplus. The petitioner has filed the objections regarding the ground that the land is unirrigated and has wrongly been shown irrigated.

The land of plot no. 38 area 9 Bigha of village Kutra has been transferred to Hari Singh and Gambhir Singh through a registered sale deed on 13.7.1978 and plot no. 37 area 8 Bigha of village Kutra has been transferred on 12.7.1985 to Laxman Singh by a registered sale deed. The objections of the petitioner were rejected and the land was declared surplus vide order

dated 28.6.1989. Being aggrieved the petitioner has filed an appeal and the said appeal was also dismissed.

The learned counsel for the petitioner has confined his prayer in the present writ petition only to the extent of land being unirrigated. A perusal of the order passed by the Prescribed Authority shows that in the year 1379F and 1380 F. the land has been showns as unirrigated but the same has been shown to be irrigated in the year 1393F. The finding of the prescribed authority has been confirmed by the appellate authority. The appellate authority has recorded finding that the land in dispute has been shown to be irrigated in the year 1393F. A perusal of Section 4A of U.P. Imposition of Ceilling on Land Holdings Act 1960 shows as under:

4-A. Determination of irrigated land- *The prescribed authority shall examine the relevant khasraqs for the year 1378 Fasli, 1379 Fasli and 1380 Fasli, the latest village map and such other record as it may consider necessary, and may also make local inspection where it considers necessary and thereupon if the prescribed authority is of opinion-*

Firstly; (a) that, irrigation facility was available for any land in respect of any crop in any one of the aforesaid years; by-

(i) any canal included in Schedule No.1 of irrigation rates notified in Notification No. 1579-W/XXIII-62-W-1946 dated March 31 1953, as amended from time to time; or

(ii) any lift irrigation canal; or

(iii) any State tube-well or a private irrigation work; and

(b) that at least two crops were grown in such land in any one of the aforesaid years; or

Secondly, that irrigation facility become available to any land by a state Irrgation work coming into operation subsequent to the enforcement of the Uttar Pradesh Impositiion of Ceiling on Land Holding (Amendment) Act, 1972, and at least two crops were grown in such land in any agricultural year between the date of such work coming into operation and the date of issue of notice under section 10; or

Thirdly (a) that any land is situated within the effective command area of a list irrigation canal or a State tube well or a private irrigation work; and

(b) that the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year;

Then the Prescribed Authority shall determine such land to be irrigated land for the purpose of this Act.

Explanation 1.- For the purposes of this section the expression 'effective command area' means an area, the fathest field wereof in any direction was irrigated-

(a) in any of the year 1378 Fasli, 1379 Fasli and 1380 Fasli or

(b) in any agricultural year referred to in the clause 'secondly'.

Explanation II- The ownership and location of a private irrigation work shall not be relevant for the purpose of this section.

Explanation III- Where sugarcane crop was grown on any land in any of the years 1378 Fasli, 1379 Fasli and 1380 Fasli it shall be deemed that two crops were grown on it in any

of these years, and that the land is capable of growing two cops in an agricultural year.

The counsel for the petitioner has referred 1987 ALJ 585, Mahendra Singh vs. State, where it has been held that burden lies on the State to prove surplus land. It has been held as under:

6. *In order to determine the extent of irrigated land the ceiling authorities are required to construe the provisions of section 4-A of the act which reads as below-*

4-A. Determination of irrigated land- *The prescribed authority shall examine the revelant khasraqs for the year 1378 Fasli, 1379 Fasli and 1380 Fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary and thereupon if the prescribed authority is of opinion-*

Firstly;……..

Secondly,……..

Thirdly (a) that any land is situated within the effective command area of a lift irrigation canal or a State tube well or a private irrigation work; and

(b) that the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year; then the Prescribed Authority shall determine such land to be irrigated land for the purpose of this Act.

7. Section 3(14) of the U.P. Imposition of Ceiling on Land Holdings Act defines private irrigation work as below:-

"Private irrigation work' means a private tube well or a private lift irrigation work operated by diesel or electric power

for the supply of water from a perennial water source, completed before August 15, 1972. "

In view of the aforesaid provisions I think that the burden lies upon the State to prove the extent of irrigated land. In the facts and circumstances of the present case the evidence led by the State to prove the extent of irrigated land should have been examined by the appellate authority. To my mind the appellate authority has patently erred in not addressing itself to this aspect of the matter. The appellate authority in observiang that the oral evidence shall not be considered in giving a finding on the point of land being irrigated has placed reliance upon the case of Jaswant Singh vs. State of U.P. (1978) 4 All. L.R. 797: The aforesaid case has been considered and a Division Bench of this Court in 1979 All WC 579: (1979 All LJ 1113) has observed in paragraph 10 of its judgment as below:

"…. It is possible to contend that merely because Section 4-A of the Act makes it incumbent on the prescribed authority to take into account the record mentioned therein and resort to a local inspection, it does not by implication debar a tenure-holder likely to be affected of the right to lead oral evidence in support of his objection. In Mohd. Sulaiman Khan v. Muhammad Yar Khan, (1889) ILR 11 All 267 (FB), Mahmood J. observed as follows:

"…… I take it as an undoubted principle of law that everything is to be taken as permissible unless there is some prohibition against it. The principle is of such a comprehensive and adjuective law, and has been recognized as one of the fundamental principle of interpreting statues"

*Paragraph 12 of the aforesaid ruling reads as below_*

"Since the question does not arise for consideration in this case, we however express no final opinion and leave the correctness or otherwise of the decision Ghasi Ram v. State of U.P. (AIR 1978 All 9) and Jaswant Singh v. State of U.P. (1979 All LJ 25) (supra) to be decided as far as this aspect is concerned, in a case in which it directly arises.

In 1987 RD 146 Ram Sagar vs. Civil Judge, Bahraich, it has been held as under:

"It is also equally well settled that the onus lies on the State to establish that the land which is mentioned in the notice is irrigated land when a challenge is made by the tenure holder while filing objection. State Government is a party to every pro9ceedings under section 10(2) of the Act. In such a case, there is an adversary proceedings before the prescribed authority between the tenure holder and the Government. Int has been held in Roshan Singh's case (supra) that in sch a case what comes out is that the Government assumes the role of plaintiff and the tenure holder that of the defendant. On the basis of the statement prepared under section 10 and the objection filed by the tenure holder petitioner thereto, the prescribed authority t\strikes the issue and decides the case. When, it is disputed by a tenure holder in the objection filed against a notice that any particular plot is unirrigated and that the same has been wrongly treated as irrigated land, the onus lies squarely on the State to establish that any land treated as irrigated land in the notice actually bears that character. It is not for the tenure holdier to establish in negative that the land is unirrigated land that it ahs been wrongly treated to be irrigated land in the notice. It is incumbent upon the Prescribed Authority to examine the

relevant Khasras for the year 1378, 1379 and 1380 Fs. In order to ascertain the nature and character of the land in question. This question cropped up for consideration before the Full Bench of this Court in Hareshwar Dayal Seth v. Second Addl. District Judge and others (2) wherein it was held that the prescribed authority has to summon and examine the aforesaid relevant khasras. Thus the onus does not lie on the tenure holder to establish that the land which has been treated to be irrigated in the notice does not bear that character because there is no presumption as to the correctness or validity of the entries which are disputed or challenged."

In view of the law laid down by the Full Bench of Allahabad High Court as well as explanation 4A of the Act, the matter is sent back to the prescribed authority for deciding it afresh in the light of the observation made above and according to law.

Consequently, the writ is allowed. No order as to costs.

(Rajesh Tandon J.)

December 6, 2004.

*Dhyani